

REMARKS/ARGUMENTS

Claims 1-8 are pending in the present application. Claims 7 and 8 have been provisionally withdrawn from consideration. New claim 9 has been added. The amendment is fully supported by the original disclosure. No new matter has been introduced. Reconsideration and allowance of claims 1-9 in view of the following remarks is respectfully requested.

Jurisdiction Restriction of Group I (claims 1-6) and Group II (claims 7-8):

The Examiner has restricted the claims to two groups, Group I includes claims 1-6, drawn to a method. Group II includes claims 7 and 8 and is drawn to an apparatus for a bathtub.

In response, Applicant provisionally elects Group I with traverse. Applicant submits that the restriction between Group I and Group II to be improper. In the rejection, the Examiner states that Group I and II are related as product and process of use where the product can be used in a process not requiring charging a drain system with fluid. Applicant cannot agree.

Specifically, independent method claim 1 of Group I recites "a method for conducting a fluid leakage test on a fluid system ... comprising, placing a thin diaphragm over the overflow port of the waste water port," followed by charging, purging, and opening steps. Similarly, independent apparatus claims 7 and 8 recite apparatuses particularly suited for this method. For example, independent claim 8 recites a sealing system "for a bathtub" including "an overflow pipe ... adapted to fit through the bathtub overflow port; threads on an outer surface ... normally extending through the bathtub overflow port; a lip ...

to engage an outer surface of the bathtub and wall around the bathtub overflow port; a thin diaphragm sealed to the outer end of the upper portion to close the inlet to fluid flow; a generally L-shaped drain pipe having an upper end extending through the waste water port ... covered by a flat planer membrane of continuous construction that dwells in a single plane, rests on the bottom wall of the bathtub; a lock washer ... against a lower surface of the bottom wall of the bathtub." Accordingly, it can be seen that both the method and apparatus are restricted to use with a bathtub. Likewise, the method and apparatus are restricted to use with diaphragms/flat planer membranes over the overflow port and the waste water port. While the Examiner asserts that the product can be used in a process not requiring charging a drain system with fluid, Applicant believes that the Examiner has not provided sufficient support for the contention that the product as claimed can be used in a materially different process of using that product. Applicant invites the Examiner to provide reasoning and an example of a materially different process of using the product of claim 8 or 7 that does not read on the process of method claim 1. Specifically, the Examiner has failed to explain what materially different process can involve a sealing system having all of the recited claim elements of claim 8, and specifically including the "thin diaphragm" and the "flat planer membrane". Accordingly, in the absence of additional reasoning and examples by the examiner, Applicant submits that the restriction requirement between Group I and Group II must be withdrawn.

Additionally, Applicant submits that any additional arguments by the Examiner will be insufficient to meet the Examiner's burden of providing a reasonable example reciting the

material differences between independent method claim 1 and independent apparatus claims 7 and 8. Specifically, Applicant asserts that there is no reasonable example showing a materially different process for using the present sealing system for a bathtub having both "a thin diaphragm" and "a flat planer membrane" as recited. Accordingly, Applicant asserts that the restriction between Group I and Group II should be withdrawn.

Applicant's New Claim 9:

Pursuant to MPEP 806.05(e), Applicant has added new independent claim 9 directed to an apparatus claim including a claim to "means" for practicing the process of independent method claim 1. Accordingly, the claim 9 is a rewritten version of independent method claim 1 replacing "method" with "system" and adding "means for" language in front of each step of method claim 1. According MPEP practice of section 806.05(e) and 809.04, new independent claim 9 is a "linking claim" and "must be examined with the elected invention," and "if it is ultimately allowed, rejoinder is required."

CONCLUSION

In view of the above amendments and remarks, Applicant believes that claims 1-9 are in condition for allowance and Applicant respectfully requests allowance of such claims.

If any issues remain that may be expeditiously addressed in a telephone interview, the Examiner is encouraged to telephone the undersigned at 515/558-0200. All fees or extensions of time believed to be due in connection with this response are attached hereto; however, consider this a request for any extension

inadvertently omitted, and charge any additional fees to Deposit Account 50-2098.

Respectfully submitted,



Timothy J. Zarley
Reg. No. 45,253
ZARLEY LAW FIRM, P.L.C
Capital Square
400 Locust Street, Suite 200
Des Moines, IA 50309-2350
Phone No. (515) 558-0200
Fax No. (515) 558-7790
Customer No. 34082
Attorneys of Record

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